

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 382 of 2012

[Arising out of Order-in-Appeal No. 10/ST/APPL/DLH-IV/2011 dated 30.08.2011
passed by the Commissioner (Appeals), Central Excise, Delhi-IV, Faridabad]

M/s Goodyear India Limited

Mathura Road, Ballabgarh,
Faridabad, Haryana

.....Appellant

VERSUS

**Commissioner of Central Excise and
Service Tax, Delhi**

17-B, I.A.E.A. House,
I.P. Estate, New Delhi 110002

.....Respondent

WITH

Service Tax Appeal No. 545 of 2012

[Arising out of Order-in-Appeal No. 18/CE/APPL/DLH-IV/2011 dated 26.12.2011
passed by the Commissioner (Appeals), Central Excise, Delhi-IV, Faridabad]

M/s Goodyear India Limited

Mathura Road, Ballabgarh,
Faridabad, Haryana

.....Appellant

VERSUS

**Commissioner of Central Excise and
Service Tax, Delhi**

17-B, I.A.E.A. House,
I.P. Estate, New Delhi 110002

.....Respondent

APPEARANCE:

Shri Ajay Aggarwal, Advocate for the Appellants

Shri Harish Kapoor and Shri Ravinder Jangu, Authorized Representatives for
the Respondent

AND

Service Tax Appeal No. 58584 of 2013

[Arising out of Order-in-Appeal No. 105-106/ST/APPL/CHD-II/2013 dated 05.04.2013 passed by the Commissioner (Appeals), Cus, CE & ST, Chandigarh-II]

M/s Varindra Tools Pvt Ltd

Basti Sheikh, Jalandhar,
Punjab

.....Appellant*VERSUS***Commissioner of Central Excise and
Service Tax, Ludhiana**

Central Excise House, F Block,
Rishi Nagar, Ludhiana, Punjab

.....Respondent**WITH****Service Tax Appeal No. 53718 of 2014**

[Arising out of Order-in-Appeal No. 101/Apl/Cus(D)CampChd/2013-14 dated 07.02.2014 passed by the Commissioner (Appeals), Customs, New Customs House, Delhi (camp at Chandigarh)]

M/s Kairon Forgings Pvt Ltd

House No. 7, South Model Gram,
Post Office Model Town, Ludhiana,
Punjab

.....Appellant*VERSUS***Commissioner of Central Excise and
Service Tax, Chandigarh-I**

Central Revenue Building, Plot No. 19,
Sector 17C, Chandigarh 160017

.....Respondent**APPEARANCE:**

Shri Naveen Bindal, Advocate for the Appellants

Shri Harish Kapoor and Shri Ravinder Jangu, Authorized Representatives for
the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)**HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)****FINAL ORDER NO. 60614-60617/2025**

DATE OF HEARING: 21.04.2025

DATE OF DECISION: 23.06.2025

S. S. GARG :

These four appeals, i.e. two appeals filed by M/s Goodyear India Ltd, one appeal filed by M/s Varindra Tools and one appeal filed by M/s Kairon Forgings Pvt Ltd, are taken up together for the purpose of discussion and disposal as the issue involved in all four appeals is identical. Details of all four appeals are herein below in tabular form:

S. No.	Appeal No.	Impugned Order	Period of dispute	Demand of Service Tax (in Rs.)	Penalties (in Rs.)
1.	ST/382/2012	OIA No. 10/ST/APPL/DLH-IV/2011 dated 30.08.2011	December 2007 to March 2009	12,00,588/-	12,00,588/- u/s 78
2.	ST/545/2012	OIA No. No. 18/CE/APPL/DLH-IV/2011 dated 26.12.2011	January 2004 to November 2007	22,94,683/-	22,94,683/- u/s 78
3.	ST/58584/2013	OIA No. 105-106/ST/APPL/CHD-II/2013 dated 05.04.2013	April 2005 to March 2007	16,12,987/-	16,12,987/- u/s 78; 1,000/- u/s 77
4.	ST/53718/2014	OIA No. 101/App/Cus(D) CampChd/2013-14 dated 07.02.2014	2004-05 to 2008-09	17,59,872/-	17,59,872/- u/s 78; 1,000/- u/s 77

2. For the sake of convenience, facts of the case of M/s Goodyear India Ltd are taken up as a base, because this Tribunal vide its Final Order No. 60725-60726/2023 dated 22.12.2023 decided two appeals of M/s Goodyear India Ltd.

2.1 Briefly stated facts of the case of M/s Goodyear India Ltd are that the appellant, M/s Goodyear India Ltd, are engaged in manufacture of tyres and tubes which are sold in the domestic

market as well as overseas. The appellant have engaged commission agents abroad to provide certain services with respect to their exports and have paid the commission thereof. Revenue was of the opinion that the commission paid by the appellants is chargeable to service tax under the Reverse Charge Mechanism whereas the appellants entertained a view that as the services are rendered and received in a territory beyond India, the same are not taxable. Two show cause notices, dated 25.04.2008 and 30.06.2009, covering the period January 2004 to November 2007 and December 2007 to March 2009, demanding service tax of Rs.29,05,153/- and Rs.12,00,588/- respectively, were issued to the appellant. The said show cause notices were adjudicated by the adjudicating authority vide Orders-in-Original dated 22.02.2011 and 30.08.2010 respectively. On appeal filed by the appellant, the learned Commissioner (Appeals) vide impugned orders dated 26.12.2011 and 30.08.2011 respectively, rejected the appeals of the appellant and upheld the Orders-in-Original.

3. Heard both the sides and perused the material on records.

4. Shri Ajay Aggarwal, the learned Counsel appearing on behalf of M/s Goodyear India Ltd, submits that the appeals of M/s Goodyear India Ltd were earlier decided by this Tribunal vide its order dated 22.12.2023 whereby the Tribunal partially allowed the appeals by setting aside the demands being barred by limitation and penalties imposed, while confirming the rest of the demand. He further submits that the appellant challenged the decision of the Tribunal before the Hon'ble Apex Court and the Hon'ble Apex Court vide its order dated

08.04.2024, granted liberty to the appellant to seek remedies in accordance with law. Thereafter, the appellant filed applications seeking rectification of mistake before the Tribunal and the Tribunal vide its order dated 06.08.2024, recalled its earlier order dated 22.12.2023 and both the appeals were restored to their original numbers for a fresh hearing. Thereafter, this Tribunal heard the present appeals on 21.04.2025 afresh.

4.1 The learned Counsel further submits that during the relevant period, the appellant appointed foreign agents outside India for procurement of purchase orders from the foreign buyers and the said purchase orders were procured by the foreign agents outside India. The purchase orders so procured, on communication to the appellant, were met by the appellant by export of its products, delivery of which was taken by the foreign agents outside India. He also submits that the foreign agents dispatch the goods to the foreign customers outside India and realize the payment from the foreign customers outside India, which is remitted to the appellant; for these services, which are rendered outside India, the appellant pays commission charges to the foreign agents.

4.2 The learned Counsel further submits that the department is seeking to levy service tax on the aforesaid commission charges paid by the appellant to the foreign agents for services rendered outside India under the head 'Business Auxiliary Service' under Section 65(19) of the Finance Act, 1994 read with Section 66A of the Act, on reverse charge basis, which is the subject matter of dispute in the present appeals.

4.3 The learned Counsel further submits that the show cause notices issued to the appellant, seeking tax on the services rendered outside India on reverse charge basis, were adjudicated by the adjudicating authority vide Orders-in-Original dated 22.02.2011 and 30.08.2010 respectively. The adjudicating authority in his Order-in-Original dated 30.08.2010 recorded the following findings:

"(i) Thus, the service has been rendered and received at the same time and entirely outside India (in para 14.2).

(ii) The only dispute is whether the department can levy service tax on services rendered abroad (in para 14.3).

(iii) I find that the party has received the services outside India from foreign agents who have procured orders outside India against which they had supplied the goods. Since the services have been received outside India, I am of the view that the party is liable to pay service tax as recipient of service.... (in para 14.17)"

Also, the adjudicating authority in his Order-in-Original dated 22.02.2011 recorded the following findings:

"(i) Thus, the service has been rendered and received at the same time and entirely outside India (in para 5.1.1).

(ii) The only dispute is whether the department can levy service tax on services rendered abroad (in para 5.1.2)".

4.4 The learned Counsel further submits that the Commissioner (Appeals) in his Order-in-Appeal dated 30.08.2011, has specifically

recorded that *"..... the action of production and supply of tyres in the manufacturing unit in India is consequent to the service rendered in other country..... (in para 6)"*.

4.5 The learned Counsel also submits that the Tribunal in its earlier order dated 22.12.2023 has also affirmed the aforesaid findings of fact by holding that *".... it cannot be said that services are received abroad though they are certainly performed outside India (in para 8)."*

4.6 The learned Counsel further submits that all the authorities as well as the Tribunal, in unison, accept that the services were performed outside India, which is a matter of undisputed fact on record; more so, when there is no challenge to the aforesaid findings of fact at the instance of department.

4.7 The learned Counsel further submits that so far as Rule 3(iii) of Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 is concerned, the said rule in its opening portion contemplates receiving of services in India, which is clearly absent in the present case in view of the clear factual findings of the authorities below as well as the Tribunal. In this regard, he refers to Rule 3 of Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 and submits that Rule 3 *ibid* clearly supports the point being canvassed by the appellant.

4.8 The learned Counsel further submits that so far as Rule 3(ii) of Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 is concerned, it is in the context of certain other

services (not applicable in this case) creates a deeming fiction in its first proviso that certain taxable services, which are partly performed in India, shall be treated as performed in India.

4.9 The learned Counsel further submits that the rule invoked in the present case is sub-rule (iii) of Rule 3 *ibid*, which unlike sub-rule (ii), does not have any such deeming fictions, as enacted by the first and second proviso to the said sub-rule (ii). He also submits that sub-rule (iii) has altogether a different proviso which is also in relation to certain other services (not applicable in the present case).

4.10 He further submits that absent such deeming fiction of law as contained in two provisos to sub-rule (ii), any services which are admittedly and unquestionably performed/rendered outside India, cannot be lawfully treated to have been performed in India and therefore, they are outside the tax fold. He also submits that if the services are not performed in India at all, there is no question of it being received in India within the meaning of Section 66A of the Act read with aforesaid rules.

4.11 He places reliance on the decision of Hon'ble Delhi High Court in the case of **Orient Crafts Ltd vs. UOI - 2006 (4) STR 81 (Del.)**, wherein it has been held that no service tax at all can be levied on services rendered and received outside India. He also refers to the **CBEC's Circular dated 19.04.2006**, wherein the CBEC in para 4.2.3, has clarified the scope of Section 66A as follows:

"Section 66A is to be read with the Taxation of Services (provided from outside India and received in India) Rules, 2006. It may be

noted that only services received in India are taxable under these provisions."

4.12 The learned Counsel further submits that Section 64(1) of the Finance Act, 1994 itself provides for territorial extent of the provisions of service tax, which extends to the whole of India, except the State of Jammu and Kashmir and it certainly does not have any extra territorial extent i.e. beyond the territory of India.

4.13 Regarding situs of the performance of services by a foreign party vis-a-vis an Indian Party, the learned Counsel places reliance on the decision of Hon'ble Supreme Court in the case of **Carborandum & Co. vs. CIT, Madras (1977) 2 SCC 862.**

4.14 The learned Counsel also submits that the ratios of cases of Indian National Ship Owners Association – 2009 (13) STR 235 (Bom.) and Hindustan Zinc Limited – 2008 (11) STR 338 (Tri.), relied upon by the department, are not applicable in the present case because the issue decided in those two cases is entirely different and also the said cases relate to the period before 18.04.2006.

4.15 The learned Counsel further submits that the demand of service tax being on reverse charge basis is without dispute fully CENVATABLE in view of Rule 3(1)(ixa) of CENVAT Credit Rules, 2004 inserted on 08.04.2011 with retrospective effect from 18.04.2006 which provides that the service tax leviable under Section 66A of the Finance Act, is CENVATABLE and the said position was also clarified vide the Trade Notice dated 11.09.2008 issued by CCE, Madurai.

4.16 The learned Counsel further submits that the revenue neutrality in the present case is qua the very same assessee being the appellant herein, on account of reverse charge basis and not qua any second or third party.

4.17 The learned Counsel further submits that both the show cause notices are time barred. He submits that the allegation in both the show cause notices is of mere failure to disclose and not that of suppression and therefore, extended period of limitation cannot be invoked. He also submits that the department in the present case, as early as 13.09.2006 sought to tax the very same services under the head "Clearing and Forwarding Agent" under Section 65(25) of the Finance Act, 1994 which was duly responded to by the assessee vide its letter dated 08.03.2007 and thereafter the department accepted the explanation of the appellant and did not proceed the matter further, which clearly shows that the department was aware of the activities of the appellant and now the department has changed its position and seeking to tax the appellant regarding the same services under the head "Business Auxiliary Services" by initiating the present proceedings, which is clearly time barred. He relies on the decision of Hon'ble Supreme Court in the case of **Nizam Sugar Factory vs. Collector of C.E., A.P. - 2008 (9) STR 314 (SC)**, which held that extended period of limitation cannot be invoked for the subsequent show cause notice.

4.18 The learned Counsel further submits that the Tribunal, after considering the submissions of the appellant, vide its earlier order

dated 22.12.2023 set aside the demand beyond limitation as well as the penalty.

5. Shri Naveen Bindal, the learned Counsel appearing on behalf of M/s Varindra Tools and M/s Kairon Forgings Pvt Ltd, adopts the arguments of the learned Counsel Shri Ajay Aggarwal, appeared for M/s Goodyear India Ltd, as the issue involved in Appeal Nos. ST/58584/2013 & ST/53718/2014, is identical.

6. On the other hand, Shri Harish Kapoor, assisted by Shri Ravinder Jangu, learned Authorized Representatives for the department, reiterates the findings of the impugned order. He submits that the validity of Section 66A of Finance Act, 1994 is not in dispute; the services received by the appellant are in the category of "Business Auxiliary Service", which were used by the appellant in the manufacture and export of tyres and therefore, the services of the overseas agents, though performed outside India, have been received by none other than the appellant situated in India. He further submits that the adjudicating authority was correct in holding that the services rendered are taxable in view of Rule 2(1)(d)(iv) of Service Tax (Fifth Amendment) Rules, 2005 and sub-section (iii) of Section 66A of Finance Act, 1994. In support of his submission, he relies on the following cases:

- **Commr of ST, New Delhi vs. Melange Developers Pvt. Ltd. – 2020 (33) GSTL 116 (Tri. LB)**
- **Commr of Cus, CE & ST, Bangalore (Adj.) vs. Northern Operating Systems Pvt. Ltd. – 2022 (61) GSTL 129 (SC)**

7. We have considered the submissions made by both the parties and perused the material on records. It is an admitted fact that the

appellant had appointed commission agents abroad who would book orders for the sale of tyres for the appellant. The appellant exports the tyres manufactured in India and accordingly realizes the sale proceeds for the services rendered by the overseas agents, and pays them a commission. The Revenue is seeking to levy service tax on the commission paid by the appellant to the overseas agents alleging that those agents are performing "Business Auxiliary Service" to the appellant. The contention of the Revenue is that the said services rendered by the overseas agents are received and utilized in India; whereas, the contention of the appellant is that the services are rendered and received abroad.

8. We find that both the authorities below, while passing the Orders-in-Original and Orders-in-Appeal, have recorded clear findings that the services have been rendered and received at the same time and entirely outside India. The said findings have not been questioned by the Revenue by filing any appeal against the orders of both the authorities.

8.1 Further, we find that once there are clear cut findings of fact that the services have been rendered entirely outside India, the same cannot be taxed in India by invoking the Rule 3(iii) of Taxation of Services (Provided from Outside India and Received in India) Rules, 2006, because the said rule in its opening portion contemplates receiving of services in India, which is clearly absent in the present case. Here, it is relevant to reproduce the statutory provisions of Section 66A of the Finance Act as amended from 18.04.2006 as well

as Rule 2(1)(d)(iv) and Section 68(2) of the Finance Act, which are reproduced herein below:

Section 66A: Charge of service tax on services received from outside India -

"(1) Where any service specified in clause (105) of section 65 is

(a) provided or to be provided by a person who has established a business or has a fixed establishment from which the service is provided or to be provided or has his permanent address or usual place of residence, in a country other than India, and

(b) received by a person (hereinafter referred to as the recipient) who has his place of business, fixed establishment, permanent address or usual place of residence, in India, such service shall, for the purposes of this section, be taxable service, and such taxable service shall be treated as if the recipient had himself provided the service in India, and accordingly all the provisions of this Chapter shall apply:

Provided *that where the recipient of the service is an individual and such service received by him is otherwise than for the purpose of use in any business or commerce, the provisions of this sub-section shall not apply:*

Provided *further that where the provider of the service has his business establishment both in that country and elsewhere, the country, where the establishment of the provider of service directly concerned with the provision of service is located, shall be treated as the country from which the service is provided or to be provided.*

(2) Where a person is carrying on a business through a permanent establishment in India and through another permanent establishment in a country other than India, such permanent establishments shall be treated as separate persons for the purposes of this section.

Explanation 1.— *A person carrying on a business through a branch or agency in any country shall be treated as having a business establishment in that country.*

Explanation 2.—*Usual place of residence, in relation to a body corporate, means the place where it is incorporated or otherwise legally constituted.*

Rule 2 (1)(d)(iv), as amended by the Service Tax (Fifth Amendment) Rules, 2005, by Notification No. 23/2005-ST dated 07.06.2005, w.e.f. 16.06.2005 -

"2(1) In these rules, unless the context otherwise requires,

(d) person liable for paying the service tax means:

(iv) "in relation to any taxable service provided or to be provided by a person, who has established a business or has a fixed establishment from which the service is provided or to be provided, or has his permanent address or usual place of residence, in a country other than India, and such service provider does not have any office in India, the person who receives such service and has his place of business, fixed establishment, permanent address or, as the case may be, usual place of residence, in India."

Rule 2 (1)(d)(iv) as amended by the Service Tax (Second Amendment) Rules, 2006 vide Notification No.10/2006 dated 19.04.2006 -

"2(1) in these rules unless the context otherwise requires-

(d) person liable for paying the service tax means:

(iv) "in relation to any taxable service provided or to be provided by any person from a country other than India and received by any person in India under Section 66A of the Finance Act, 1994, recipient of such service"

Section 68(2) of the Finance Act, 1994 -

"68(2) Notwithstanding anything contained in section 68 (1) in respect of any taxable service notified by the Central Government in the Official Gazette the service tax thereon shall be paid by such person and in such manner as may be prescribed at the rate specified in

Section 66 and all the provisions of this Chapter shall apply to such person as if he is the person liable for paying the service tax in relation to such service."

8.2 On going through the provisions of Section 66A, Rule 2(1)(d)(iv) and Section 68(2) cited supra, we find that the Reverse Charge Mechanism was introduced w.e.f. 18.04.2006 but in the present case, the said provision is not applicable because it is a clear cut finding that the impugned services have been performed/rendered entirely outside India and the same cannot be taxed in India under the provisions of Reverse Charge Mechanism. We also find that even the deeming provisions as contemplated under Rule 3(ii) not applicable in the present case in view of the clear cut findings that services were received entirely outside India.

8.3 We also find that the Hon'ble Delhi High Court in the case of **Orient Crafts Ltd** (supra), has clearly held that no service tax at all can be levied on services rendered and received outside India. By following the ratio of the said decision and also considering the **CBEC's Circular dated 19.04.2006** (supra), we are of the considered view that the appellant is not liable to service tax under reverse charge basis; therefore, to this extent, we set aside the demand.

9. Regarding the issue of revenue neutrality, we find that in the appellant's own case, revenue neutrality is applicable qua the same assessee on account of reverse charge basis and not towards any other party. We also find that demand of service tax being on reverse charge basis is without dispute fully CENVATABLE in view of Rule

3(1)(ixa) of CENVAT Credit Rules, 2004 inserted on 08.04.2011 with retrospective effect from 18.04.2006 which clearly provides that the service tax leviable under Section 66A of the Finance Act, is CENVATABLE.

10. Regarding the issue of limitation, we find that once the service tax leviable under Section 66A, is CENVATABLE, then the question of intent to evade the tax does not arise and extended period of limitation cannot be invoked as held by the Hon'ble Supreme Court in the case of **Nirlon Limited vs. Commr of CE, Mumbai – 2015 (320) ELT 22 (SC)**.

10.1 We also find that earlier, the department sought to tax the same services under the head "Clearing and Forwarding Agent" under Section 65(25) of the Finance Act, 1994, which was subsequently dropped by the department and now, the department is seeking to tax the same services under the head "Business Auxiliary Services" by initiating the present proceedings. Therefore, it cannot be said that the department was not having any knowledge rather the department had complete knowledge as early as September 2006 and therefore, the question of suppression in the facts and circumstances of the present case, does not arise.

10.2 Further, in the case of **Nizam Sugar Factory** (supra), the Hon'ble Apex Court has clearly held that extended period of limitation cannot be invoked for the subsequent show cause notice.

10.3 We also find that this Tribunal vide its earlier order dated 22.12.2023 set aside the demand for extended period of limitation

and also set aside the penalty. Therefore, in the present case also, we set aside the demand for the extended period and also set aside the penalty.

11. In view of our discussion above, we are of the considered opinion that the impugned orders are not sustainable on merits as well as on limitation; consequently, we set aside the same and allow all four appeals with consequential relief, if any, as per law.

(Order pronounced in the open court on 23.06.2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)